

Memorandum

To : Mr. Ramon J. Hirsig
Executive Director – MIC: 73

Date: September 23, 2004



From : Stephen R. Rudd, Acting Deputy Director
Sales and Use Tax Department – MIC: 43

Subject : Regulation 1630, *Packers, Loaders, and Shippers*
Chief Counsel's Rulemaking Calendar – October 19, 2004

I am requesting your approval to place proposed amendments to Regulation 1630, *Packers, Loaders, and Shippers*, on the Chief Counsel's Rulemaking Calendar for Board approval.

Regulation 1630 explains the application of tax to sales or use of certain property by packers, loaders, and shippers. The proposed amendments would incorporate the provisions of Revenue and Taxation Code (RTC) 6364(d) to subdivision (b)(2)(C) of the regulation. RTC Section 6364(d) provides an exemption for the sale or lease of a container to a person who places food products for human consumption in the container for shipment, provided the food products will be sold, whether in the same container or not, and whether the food products are remanufactured or repackaged prior to sale. This exemption became operative April 1, 2000.

Attached are proposed amendments to the regulation, which reflect the above change.

We request your approval to place the matter on the Chief Counsel's Rulemaking Calendar on October 19, 2004, for Board authorization to amend the regulation in accordance with Title 1, California Code of Regulations, section 100. Legal Department staff has advised us that these changes are without regulatory effect and are not subject to the normal public hearing process.

If you have any questions regarding this request, please let me know or contact Ms. Mariflor Jimenez at (916) 324-2952.

Attachment

Recommendation by:



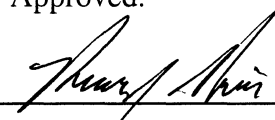
Deputy Director

Approved:



Timothy Boyer, Chief Counsel
Legal Department

Approved:



Ramon J. Hirsig, Executive Director

BOARD APPROVED

At the _____ Board Meeting

Deborah Pellegrini, Chief
Board Proceedings Division

Attachments

cc (all with attachments):
Mr. Timothy Boyer (MIC 83)
Ms. Deborah Pellegrini (MIC 81)
Ms. Janice Thurston (MIC 82)
Mr. John Waid (MIC 82)
Mr. Jeffrey L. McGuire (MIC 92)
Mr. Geoffrey E. Lyle (MIC 50)
Acting Supervisor, BTC Team (MIC 50)
Ms. Cecilia Watkins (MIC 50)
Ms. Mariflor Jimenez (MIC 50)

bc: BTCTS file – Regulation 1630
SUTD Deputy Director's File

Author: Cecilia Watkins

Proposed Amendments to Regulation 1630. PACKERS, LOADERS, AND SHIPPERS

(a) **IN GENERAL - DEFINITIONS.** Packers, loaders, and shippers (hereinafter collectively called "shippers") purchase tangible personal property to be used in conditioning the goods to be shipped and to preserve, protect, and contain the goods during transportation. Such property includes, but is not limited to, the following:

(1) PROPERTY USED TO CONDITION THE GOODS FOR SHIPMENT OR TO PRESERVE AND PROTECT THE GOODS DURING SHIPMENT.

| | |
|---------------------------|--------------------------------|
| bracing materials | gas (including dispensers) |
| car strips | ice and dry ice |
| cleaning compounds | miscellaneous preservatives |
| degreasing compounds | rust preventing compounds |
| derusting compounds | salt |
| dunnage or "loose" lumber | solvents |
| (except as otherwise | tarpaulin (weather protection) |
| specified in (2) below) | |

(2) PROPERTY USED AS CONTAINERS OR AS PARTS OF CONTAINERS OF THE GOODS SHIPPED.

| | |
|-----------------------------|----------------------------------|
| bags | gummed tape |
| barrels | kegs |
| bottles | lumber (including "loose" lumber |
| boxes | used in the same manner and for |
| cans | the same purpose as pallets) |
| carboys | pallets |
| cartons | sacks |
| crates | strapping |
| cylinders | twine |
| drums | wrapping paper |
| excelsior and other packing | |
| and crating material | |

(3) PROPERTY THAT WHEN PHYSICALLY INCORPORATED IN THE FINAL PRODUCT BEING SOLD IS A SALE FOR RESALE.

| | |
|---------------------------------|-------------------------|
| wax and fungicide | protective coatings |
| post harvest protective shields | salts, acids & caustics |

(b) APPLICATION OF TAX.

(1) PROPERTY USED TO CONDITION, PRESERVE OR PROTECT GOODS DURING SHIPMENT.

(A) **General.** Tax applies to sales to shippers of property used in conditioning the goods to be shipped, or to preserve and protect the goods during transportation. It is immaterial whether or not a separate charge or separate billing is made by the shipper for the particular item, that it may not be returned to or reused by the shipper, that the goods are shipped in interstate or foreign commerce, or that the shipper's contract is with the United States. The property is purchased by the shipper for a purpose other than resale, i.e., conditioning the goods, or preserving and protecting the goods during shipment. Thus, the sale to the shipper is a retail sale, even though he or she may not retain title to the property used by him or her.

(B) Ice, Carbon Dioxide and Preservatives.

1. Ice. The sale or use of ice or dry ice used in packing and shipping or transporting food products for human consumption is exempt from tax when the food products are shipped or transported in intrastate, interstate or foreign commerce by common carriers, contract carriers, or proprietary carriers.

2. Carbon Dioxide. Operative January 1, 1995, the sale or use of carbon dioxide used in packing and shipping or transporting fruits or vegetables for human consumption is exempt from tax when the fruits or vegetables are shipped or transported in intrastate, interstate, or foreign commerce by common carriers, contract carriers, or

Proposed Amendments to Regulation 1630.(Continued)

proprietary carriers provided the fruits or vegetables are not sold to the ultimate consumer in the package that contains the carbon dioxide.

3. Preservatives. Tax does not apply to the sale or purchase of preservative products under the following two circumstances:

a. The preservative product is included in the shipping container of exempt food products when they serve a beneficial purpose in preserving the food products during shipment or storage. These include moisture-absorbing desiccants, gas-absorbing ethylene sachets, and gas emitting sulfur dioxide pads or similar products.

b. The preservative product serves a beneficial purpose in preserving the food product and remains in the packaged food product until opened by the ultimate consumer. This includes nitrogen gas used to maintain an inert atmosphere in packaged food products which remains in the packaged food as a preservative until opened by the consumer; and moisture absorbing desiccants included in individual packages of beef jerky which remain sealed until opened by the consumer.

(2) PROPERTY USED AS CONTAINERS OR PARTS OF CONTAINERS OF GOODS SHIPPED.

(A) General. Tax applies to the sale or use of containers or container materials under the provisions of Regulation 1589, "Containers and Labels", (18 CCR 1589). However, except as provided in paragraph (b)(2)(C), when the shipper is not the seller of the contents, the sale of the containers or container materials or parts to the shipper is a taxable retail sale unless the shipper expressly contracts with his or her customer for the sale to his or her customer of the container or container material, making a separate charge therefor, with title passing from the shipper to his or her customer before any use of the material is made, and without any understanding or trade custom that the property will be returned to the shipper for reuse. When all of these conditions exist, the shipper may purchase the property for resale by giving a resale certificate to the supplier of the property. The sale of the property by the shipper is taxable unless exempt as a sale to the United States, as a sale in interstate or foreign commerce, or exempt for any other reason.

(B) Carbon Dioxide. Operative January 1, 1995, the sale or use of nonreturnable container materials containing carbon dioxide atmosphere is exempt from the tax when used in packing and shipping or transporting fruits or vegetables in intrastate, interstate, or foreign commerce by common carriers, contract carriers, or proprietary carriers, whether or not the shipper is the seller of the fruits or vegetables.

(C) Packing Food Products for Human Consumption. Operative April 1, 2000, the sale of, and the storage, use, or other consumption of, all containers is exempt from tax when sold or leased without the contents to persons who place food products for human consumption in the containers for shipment, provided the food products will be sold. The exemption applies without regard to whether the food products are sold in the same container or not, or whether the food products are remanufactured or repackaged prior to their sale. Sales tax does not apply to sales of nonreturnable containers sold without the contents to packers who place food products for human consumption in the containers for subsequent sale.

(3) DISPOSABLE TEMPERATURE RECORDING DEVICES. The sale or storage, use or other consumption of a disposable temperature recording device in this state is subject to tax unless an exemption or exclusion from taxation applies. When a shipper of perishable food products purchases for resale a disposable temperature recording device for the sole purpose of shipping the device along with the products it ships, the shipper of the perishable food products does not make a taxable use of the disposable temperature recording device merely by starting the recording device in this state. If, pursuant to a perishable food product shipper's contract with its customer, the shipper provides a recording device along with perishable food products to an out-of-state point, the shipper's sale of the device constitutes an exempt sale in interstate commerce pursuant to Revenue and Taxation Code section 6396. The provisions of this paragraph do not, however, apply to the sale or lease of non-disposable temperature recording devices.